

## **401 KAR 42:330. Small Owners Tank Removal Account.**

RELATES TO: KRS 224.60-105, 224.60-130(1)(a), (b), (j), 224.60-140, 224.60-150, 40 C.F.R. 280 Subpart H

STATUTORY AUTHORITY: KRS 224.60-130(1)(j)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(j) requires the establishment of an account to reimburse small owners for the reasonable cost of permanent closure, and authorizes the cabinet to promulgate administrative regulations to establish this account. This administrative regulation establishes the eligibility requirements and rates for reimbursement from the Small Owners Tank Removal Account (SOTRA).

### **Section 1. Eligibility.**

(1) To demonstrate eligibility, an owner shall submit a completed UST Application for Assistance for SOTRA, DWM 4293. An owner shall be eligible for reimbursement from this account if:

(a) The petroleum storage tank owner complies with the financial eligibility criteria of \$100,000 total income, or less, averaged over the last five (5) years as documented by:

1. The applicant's signed federal income tax returns for the last five (5) years, with the exception of Non-Profit Public Service Corporations, eligible governmental bodies, and all other Non-Profit entities, which shall provide tax exemption documentation and budgets for the last five (5) years; or

2. If the applicant is not required to file federal income tax returns, the applicant shall submit in lieu of federal income tax returns:

a. Budget and tax exemption documentation; or

b. Other financial statements sufficient to document income;

(b) The tanks are located at a facility that is or was involved in the storage of motor fuel;

(c) The tanks are registered with the Division of Waste Management by the owner seeking reimbursement from SOTRA pursuant to KRS 224.60-105 and 401 KAR 42:020;

(d) The owner certifies that:

1. Permanently closed tanks shall not be replaced or upgraded; and

2. All known tanks at the facility shall be permanently closed; and

(e) The owner has owned the tanks for more than one (1) year prior to the date of the application for reimbursement from this account.

(2) A newly discovered underground storage tank (UST) system shall not affect the eligibility of an owner.

(3) A tank shall not need to be in use prior to its permanent closure.

(4) An owner shall submit to the cabinet a UST Notice of Intent to Permanently Close Underground Storage Tank System, DWM 4266, incorporated by reference in 401 KAR 42:060.

(5) Federally owned facilities shall not be eligible for reimbursement from SOTRA in accordance with KRS 224.60-115(16).

### **Section 2. Account Use.**

(1) Funds in this account shall be used to reimburse eligible petroleum storage tank owners for those reasonable and necessary costs incurred through performance of permanent closure in accordance with 401 KAR 42:060.

(2) The use of this account shall be limited as established in KRS 224.60-130(1)(j).

(3)(a) The owner of a facility shall:

1. Be eligible for reimbursement of the cost of permanent closure; and

2. Not be eligible for reimbursement of the corrective action cost from this account.

(b) If corrective action is required, eligible reimbursement shall be made in accordance with 401 KAR 42:250.

(4)(a) If expenditures from this account exceed \$3,000,000 during a fiscal year, the cabinet shall suspend further reimbursements for that fiscal year. The suspension shall be in effect until the cabinet determines that further reimbursements from this account will not threaten the solvency of the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF).

(b) This determination shall be based upon legislatively enacted budgets and associated appropriations.

(5) The owner shall have one (1) year from the application approval date to perform permanent closure in accordance with 401 KAR 42:060.

### Section 3. Application Procedure.

(1) The owner shall file a completed UST Application for Assistance for SOTRA, DWM 4293, for participation in this account at least forty-five (45) days prior to the permanent closure of the petroleum storage tank. The owner shall also provide:

(a) Verification of income through the submittal of:

1. Copies of the applicant's signed federal income tax returns for the last five (5) years, with the exception of non-profit public service corporations, eligible governmental bodies, and all other non-profit entities, which shall provide tax exemption documentation and budgets for the last five (5) years; or

2. If the applicant is not required by federal law to file federal income tax returns, the applicant shall submit in lieu of federal income tax returns;

a. Budget and tax exemption documentation; or

b. Other financial statements sufficient to document income;

(b) A copy of the contract between the owner and the primary contractor;

(c) A facility map identifying approximate property boundaries, placement of petroleum storage tank pits, location of other relevant facility features including buildings, canopies, drive-ways, piping, dispenser islands, paved areas, and the proposed extent of areas to be excavated in the performance of permanent closure, including dimensions;

(d) Color photographs of the facility and the areas to be impacted by the permanent closure; and

(e) A copy of a deed or other documentation indicating ownership of the tanks, if the tanks have not been registered in the applicant's name with the Division of Waste Management for twelve (12) months prior to the SOTRA application being submitted.

(2)(a) In response to the application submitted, the UST Branch shall issue a letter setting forth the owner's eligibility status and, if eligible, establishing a reimbursable amount in accordance with Section 4 of this administrative regulation.

(b) Permanent closure of the tank system shall not begin until the UST Branch has approved the application and established the reimbursable amount. Failure to comply with this requirement shall result in denial of the reimbursement.

### Section 4. Permanent Closure Costs.

(1) Costs for the permanent closure and facility restoration shall be established in the UST PSTEAF Reimbursement Rates, incorporated by reference in 401 KAR 42:250. The reimbursable amount, issued in a written approval by the UST Branch, shall be based on:

(a) The formulated task rates established in Section 2.0 of the UST PSTEAF Reimbursement Rates, incorporated by reference in 401 KAR 42:250; and

(b) For a specific task that does not have a formulated task rate in the UST PSTEAF Reimbursement Rates, incorporated by reference in 401 KAR 42:250, a cost estimate submitted by the owner. The cost estimate shall include:

1. A cost itemization to complete the individual task using those personnel and equipment rates established in Section 5.0 of the UST PSTEAF Reimbursement Rates, incorporated by reference in 401 KAR 42:250, applicable to individual components of the task;

2. Three (3) competitive bids from suppliers or manufacturers of corrective action equipment for individual equipment purchase or rental, exceeding \$3,000, if applicable, containing a description of the equipment to be purchased or rented provided by the supplier or manufacturer for new equipment purchased; and

3. An estimate for materials to be purchased, if applicable.

(2) The reimbursable amount for facility restoration that has not been directed by the UST Branch shall be established by the submittal of an obligation request to the cabinet, with the information required by Section 5.9.2 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, for the completion of facility restoration actions.

(a) Upon an obligation request approval, a written approval of an obligation and guarantee of payment shall be issued in writing by the UST Branch in accordance with KRS 224.60-140(5).

(b) Reimbursement for facility restoration activities shall be made in accordance with Section 5 of this administrative regulation.

(3) The UST Branch shall establish the reimbursable amount in accordance with subsection (1) of this section. The cabinet shall attach to the written approval:

(a) An itemization of the reimbursable amount; and

(b) The UST Claim Request for Directed Actions, DWM 4286, incorporated by reference in 401 KAR 42:250.

(4) The issuance of a written approval by the UST Branch shall, subject to the provisions of Section 5 of this administrative regulation, constitute an obligation and guarantee of payment of the reimbursable amount identified within a written approval, in accordance with KRS 224.60-140(5).

(5) The reimbursable amount established by the UST Branch shall be adjusted to:

(a) Include the formulated task rates for mobilization, per diem, and field equipment; and

(b) Deduct those actions approved but that could not reasonably be completed for reasons beyond the control of the applicant eligible company or partnership.

(6) Optional soil removal outside of the excavation zone in accordance with Section 4.15 of the UST Corrective Action Manual, incorporated by reference in 401 KAR 42:060, shall be reimbursable:

(a) If a no further action letter has been issued for the subject facility upon completion of permanent closure activities, without additional corrective action activities being performed; or

(b) In accordance with 401 KAR 42:050, if additional corrective action is necessary.

(7) Facility restoration activities shall be reimbursable:

(a) If a no further action letter has been issued for the subject facility upon completion of permanent closure activities in accordance with KAR 42:060, without additional corrective action activities being performed; and

(b) In accordance with 401 KAR 42:250, if additional corrective action is necessary.

Section 5. Claims. (1) Eligible reimbursement for permanent closure costs associated with a SOTRA Application for Assistance shall be made in accordance with the requirements in effect at the time the SOTRA Application for Assistance was approved.

(2) To receive reimbursement, an owner shall submit a completed UST Claim Request for Directed Actions, DWM 4286, incorporated by reference in 401 KAR 42:250.

(3) In addition to the completed claim form, the owner shall submit supporting documentation of actual cost, including invoices, and weigh tickets.

(4) The UST Branch shall review a claim request for:

(a) The number and size of tanks removed; and

(b) Verification of eligible costs.

(5) To receive reimbursement, an owner shall have paid all annual tank fees as required by KRS 224.60-150.

(6) The cabinet may request additional supporting documentation to verify the reasonableness or necessity of a cost.

(7) If a claim is deficient, a written correspondence, stating the deficiencies, shall be issued to the applicant. Failure by the applicant to provide the requested information and documentation within thirty (30) days of receipt of the request shall cause the claim to be denied.

(8) Reimbursement shall be contingent upon a determination by the cabinet that the report required has been deemed technically complete and complies with the requirements of 401 KAR 42:060.

(9)(a) An entry level shall not be assessed for eligible reimbursement in accordance with this administrative regulation.

(b) An entry level shall be assessed upon confirmation of a release, constituting an occurrence, that requires corrective action for which the applicant is seeking reimbursement through the Financial Responsibility Account or Petroleum Storage Tank Account in accordance with 401 KAR 42:250.

(10) An applicant may request a reconsideration of a denial of a claim request, or portion thereof, and the cabinet shall review the request, in accordance with the procedures established in 401 KAR 42:250, Section 15.

(11) All claims shall be submitted within two (2) years after issuance of a no further action letter by the UST Branch in accordance with KRS 224.60-130(1)(n).

#### Section 6. Extensions.

(1) The owner of a UST system may request an extension to a deadline established by this administrative regulation or established by the cabinet in a written directive.

(2) The extension request shall be submitted in writing and received by the UST Branch of the Division of Waste Management prior to the deadline.

(3) The cabinet may grant an extension, if the cabinet determines that an extension would not have a detrimental impact on human health or the environment.

#### Section 7. Incorporation by Reference.

(1) "UST Application for Assistance for SOTRA", DWM 4293, September 2019, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Waste Management, 300 Sower Boulevard, Second Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) This material is also available on the Division of Waste Management's Web site at [eec.ky.gov/environmental-protection/waste](http://eec.ky.gov/environmental-protection/waste). (23 Ky.R. 3649; 4178; 24 Ky.R. 77; eff. 7-9-1997; 25 Ky.R. 1128; 2868; eff. 6-9-1999; Recodified from 415 KAR 1:130; 32 Ky.R. 2141; 33 Ky.R. 483; eff. 9-13-2006; 37 Ky.R. 2735; 38 Ky.R. 287; 546; 746; eff. 10-6-2011; TAm eff. 7-8-2016; TAm eff. 12-21-2016; Crt eff. 10-9-2018; 45 Ky.R. 1397; 2391; 2655; eff. 4-5-2019; TAm eff. 5-

7-2019; TAm eff. 9-25-2019.)